

### REMARKS

In view of the above amendments and the following remarks, reconsideration and further examination are requested.

As required by the Examiner, formal drawings are filed herewith.

By this amendment, claims 13-21 have been canceled in favor of new claims 22-29. Support for the new limitations present in claims 22-29 can be found at least at: column 21, lines 26-30; column 14, lines 32-63; Fig. 6; column 18, lines 40-42; column 21, lines 6-26; and Fig. 21.

#### Non-statutory Double Patenting Based on In re Schneller

Claims 13-21 were provisionally rejected under the judicially created doctrine of double patenting over claims 13-21 of co-pending application 09/686,465.

According to MPEP § 804(II)(B)(2), page 800-27, with respect to non-statutory double patenting rejections based on In re Schneller, 397 F.2d 350, 158 USPQ 210 (CCPA 1968), “the approval of the TC Director must be obtained before such a non-statutory double patenting rejection can be made.” (Emphasis added). Further, it is worth noting the Board of Appeals & Interferences decision in Ex parte Davis, which, while not a precedential opinion, reflects a PTO Board of Appeals and Interferences opinion that “the principal opinion therein [i.e., in Schneller] is of doubtful controlling precedent.” Ex parte Davis, 56 USPQ2d 1434, 1436 (Bd. Pat. App. & Inter. 2000). This decision by the Board serves to reinforce the necessity of obtaining the approval of the TC Director before such a double patenting rejection is imposed.

It is submitted that the requisite approval of the TC Director has not been obtained. In a telephone conversation with the Examiner, the Examiner directed the undersigned attorney “to assume that the Director’s approval has not been obtained” when responding to the outstanding Office Action, and that the Examiner intends to remove the rejection and maintain the obviousness-type double patenting rejections.

Accordingly, it is requested that the provisional non-statutory double patenting rejection based on In re Schneller be withdrawn.

Allowed Claims

Claims 13-21 were indicated as allowed in item 3 on page 3 of the Office Action. It is submitted that claims 22-29 are allowable for the same reasons for allowance of claims 13-21.

Submission of Rule 132 Declaration

Enclosed herewith is a Declaration under 37 C.F.R. §1.132 which includes an unequivocal declaration that Mr. Oshima invented the common subject matter disclosed in U.S. Patent No. 5,555,275 and recited in the currently pending claims of the present application.

Conclusion

In view of the above amendments and remarks, it is submitted that claims 22-29 are allowable over the prior art of record and that the present application is accordingly in condition for allowance. The Examiner is invited to contact the undersigned attorney by telephone to resolve any remaining issues.

Respectfully submitted,

Mitsuaki OSHIMA et al.

By: 

Jeffrey R. Filipek  
Registration No. 41,471  
Attorney for Patentees

JRF/fs  
Washington, D.C. 20006-1021  
Telephone (202) 721-8200  
Facsimile (202) 721-8250  
October 9, 2002